IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

CRL.A.No. 22 of 1999

CC.306/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY DATED 28/3/98.

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APPELLANT/COMPLAINANT:

C.K. APPUKUTTY, AGED 65 YRS,
S/O. KUNHAN, CHAKKALAKKAL HOUSE,
CHERUVATTAKUZHI, THAZHEKODE AMSOM,
KACHERI DESOM.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS/ACCUSED::
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1. **SUNDARAN, AGED 35 YRS,**
   S/O. CHATHAN, CHAKKALAKKAL HOUSE,
   THAZHEKKODE AMSOM, KACHERI DESOM.

2. **RADHA, AGED 38 YRS,**
   D/O. CHATHAN, -DO- AMSOM DESOM.

BY ADV. SRI.V.N.RAMESAN NAMBISAN-- R1
PUBLIC PROSECUTOR SRI. K.C. SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

Crl.Appeal No.22 of 1999

Dated this the 10th day of January, 2007

Judgment

Appellant is the complainant in C.C. No. 306 of 1996 on the file of Judicial First Class Magistrate's Court-I, Thamarassery. Case of the complainant before the court below was that on 9.8.1994 the accused trespassed into the property of the complainant and demolished the southern boundary wall violating an injunction order passed by the Munsiff's Court, Kozhikode and also the accused threatened the complainant and inflicted injuries. Charges were also levelled under section 447, 427, 341, 323, 506 (1) read with 34 of the Indian Penal Code. Appellant was absent on four occasions. On 28.3.1998 also the complainant was not present and the counsel for the complainant applied for exemption from appearance of the accused. According to the appeal memorandum, the complainant was laid up. No medical certificate was produced before the trial court or before this court to show that the appellant was laid up as contended by the appellant. For violation of injunction order, appellant has got remedy before the

same Court itself. In the above circumstances, I see no ground to interfere in the matter as acquittal of the accused for non-appearance of the complainant as provided under section 256 (1) of the Code of Criminal Procedure cannot be stated to be illegal and at this distance of time, no purpose will be served in remanding the matter. Appeal dismissed.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL No.22/99

Judgment

Dated:10th January, 2007